Supreme Court, U.S.
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98-8082

CASE NO. :

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

RONALD DEAN LOWE,

Petitioner,

versus

HELEN WOODALL and SALLY WIGGINS,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI FROM THE

SUPREME COURT

FOR THE STATE OF OKLAHOMA

REGARDING A STATE CIVIL TORT LITIGATION

PETITION FOR A WRIT OF CERTIORARI

Ronald Dean Lowe
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QUESTIONS PRESENTED

The Petitioner, Ronald Dean Lowe, offers for consideration the following and heretoafter given issues in the current petition for a writ of certiorari:

(01). The Petitioner is mentally incompetent? Thusly, the Petitioner is duly entitled to protections from the courts from adverse judgments and is legally authorized to have counsel appointed, especially on appeal, of so required? See Oklahoma Statutes Annotated, 1998 Cumulative Annual Pocket Part ("C.A.P.P."), Title 12, Sections 1031 (conflate Fourth and Fifth grounds) and 1038. See also Oklahoma Statutes Annotated, 1998 Cumulative Annual Pocket Part ("C.A.P.P."), Title 12, Section 2017.

(02). The current litigation should properly have been heard and adjudicated by the Supreme Court, for the State of Oklahoma, since the matter could and would have far-reaching state-wide effect? Accord Draper v. State, 621 P.2d 1142 (Okla. 1980).

(03). The decision of the Court of Civil Appeals, for the State of Oklahoma, Division IV, is not in accord with the applicable decisions of the Supreme Court, for the State of Oklahoma, and the Supreme Court of the United States as detailed hereafter:

(A). The State of Oklahoma is actively interferring with the attempts of inmates to transmit legal documents? See Lewis v. Casey, ***

U.S. ***, ***, 116 S.Ct. 2174, 2179, *** L.Ed.2d *** (1996).

(B). The State of Oklahoma is improperly charging indigent prisoners for postal charges? See Bounds v. Smith, 430 U.S. 817, 824-825, 97 S.Ct. 1491, 1496, 52 L.Ed.2d 72 (1977).

(C). The State of Oklahoma is improperly censuring legal mail? See Wolff v. McDonnell, 418 U.S. 539, 576-577, 94 S.Ct. 2963, 2984-2985, 41 L.Ed.2d 935 (1974). Accord Jensen v. Klecker, 648 F.2d 1179 (8th Cir. 1981); Rasmus v. Lamm, 639 F.2d 559 (10th Cir. 1980), cert. denied, 450 U.S. 1041, 101 S.Ct. 1758, 68 L.Ed.2d 239 (1980); Martin v. Wainwright, 526 F.2d 938 (5th Cir. 1976); and Wilson v. Skinner, 462 F.2d 630 (2nd Cir. 1972).

(D). The State of Oklahoma has overly limited the parties defined as "legal correspondents?" See Lewis v. Casey, supra, 116 S.Ct., at 2181-2182, 2192. Accord U.S.C.S., Title 42, Section 1983.

(E). The State of Oklahoma is operating the prisons counter to DOC policy? See OP-030117, page 5. Compare OP-030115.

(F). The State of Oklahoma has caused actual harm to the Petitioner? See Lewis v. Casey, supra, 116 S.Ct., at 2179.

(G). The State of Oklahoma personell are entitled to only qualified

immunity? See Harlow v. Fitzgerald, 457 U.S. 800, 812, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).

(H). The State of Oklahoma must joinder additional parties? Accord Oklahoma Statutes Annotated, 1998 Cumulative Annual Pocket Part ("C.A.P.P."), Title 12, Section 2019.

(I). The State of Oklahoma has ignored the appropriate indigency and pauperis standard mandated or dictated by the Legislature of the State of Oklahoma? Accord Oklahoma Statutes Annotated, 1998 C.A.P.P., Title 12, Section 2003.1(C). See Gluth v. Kangas, 951 F.2d 1504, 1508 (9th Cir. 1991).

(J). The State of Oklahoma has neglected the duty to provide hygiene items to prisoners? Accord Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991); Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 64 L.Ed.2d 59 (1981).

LIST OF PARTIES

The P$_e$titioner, Ronald Dean Lowe, states that all interested parties to or in the current petition for a writ of certiorari appear in the caption of the case or litigation on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Ronald Dean Lowe, herewith respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits of the matter or litigation appears at Appendix A and is unpublished.

JURISDICTION

The date on which the Supreme Court, for the State of Oklahoma, decided the present case or litigation was on the 12th day of January 1999. Further, a copy of that decision appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner, Ronald Dean Lowe, articulates that the current litigation or matter involves the following constitutional and statutory provisions:

01. OKLAHOMA CONSTITUTION DUE PROCESS OF LAW CLAUSE

'No person shall be deprived of life, liberty, or properth, without due process of law.' Oklahoma Statutes Annotated, 1981, Article 2, Section 7.

02. OKLAHOMA CIVIL TORT STATUTE

'Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.' Oklahoma Statutes Annotated, 1995, Title 76, Section 1. (Emphasis supplied).

STATEMENT OF THE CASE

The Petitioner, Ronald Dean Lowe, an inmate under the direction and control of the Department of Corrections (DOC), for the State of Oklahoma, brings the current petition for a writ of certiorari to the Supreme Court of the United States in a state of penury or in forma pauperis and via self-representation or pro se. Currently, the Petitioner is imprisoned or detained at the R.B. "Dick" Conner Correctional Center (D.C.C.C.) situated or located in the municipality or city of Hominy, within the State of Oklahoma.

This document is relevant to the conviction of the Petitioner for the alleged or putative crime of two (2) counts of murder in the first degree, in violation of Oklahoma Statutes Annotated, 1998 C.A.P.P., Title 21, Section 701.7. State v. Lowe, jury returns guilty verdicts, Case Number CRF-93-111 (District Court of Pottawatomie County, 14 September 1993).

Specifically, the current litigation challenges the constitutionality of the applicable Department of Corrections (DOC), for the State of Oklahoma, policy or procedure relevant to "access to the courts" via the topical institutional mail rooms or mail centers.

REASONS FOR GRANTING THE WRIT

01. MENTAL INCOMPETENCE

Specifically, the Petitioner is mentally incompetent.[1]

Accordingly, the competence of the Petitioner to have judgment rendered by a civil or criminal court is in question until such time that the District Court of Pottawatomie County is ordered to conduct the necessary proceedings. Until such time, the District Courts have the authority to vacate or modify judgments or orders to accomodate persons of limited mental competence or of unsound mind and to appoint counsel to represent the interests of said incomptent parties. See Oklahoma Statutes Annotated, 1988, Title 12, Sections 1031 (conflate Fourth and Fifth Grounds) and 1038. Accord Oklahoma Statutes Annotated, 1998 C.A.P.P., Title 12, Section 2017.

02. STATE-WIDE EFFECT

The Petitioner asseverates that since the current litigation could or would have far-reaching state-wide impact or effect the Supreme Court, for the State of Oklahoma, properly should have decided the matter. See Draper v. State, 621

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1. See Lowe v. State, affirmed, Opinion (Okla.Crim.App., 04 May 1995).

P.2d 1142 (Okla. 1980).

Specifically, the Supreme Court, for the State of Oklahoma, should have duly assumed original jurisdiction, in the matter, under the doctrine of publici juris as the litigation is of state-wide concern. See Draper v. State, supra, 621 P.2d, at 1145.

03. CONTRADICTED ISSUES

(A). ACCESS TO THE COURTS

'The right that Bounds acknowledged was the (already well-established) right of access to the courts. E.g., Bounds, 430 U.S., at 817, 821, 828, 97 S.Ct., at 1492-1493, 1494, 1498. In the cases to which Bounds traced its roots, we had protected that right by prohibiting State prison officials from actively interfering with inmates' attempts to prepage legal documents, e.g., Johnson v. Avery, 393 U.S. 483, 484, 489-490, 89 S.Ct. 747, 748, 750-751, 21 L.Ed.2d 718 (1969), or file them, e.g., Ex parte Hull, 312 U.S. 546, 547-549, 61 S.Ct. 640, 641-642, 85 L.Ed. 1034 (1941), and by requiring state courts to waive filing fees, e.g., Burns v. Ohio, 360 U.S. 252, 258, 79 S.Ct. 1164, 1168-1169, 3 L.Ed. 2d 1209 (1959), or transcript fees, e.g., Griffin v. Illinois, 351 U.S. 12, 19, 76 S.Ct. 585, 590-591, 100 L.Ed. 891 (1956), for indigent inmates.' Lewis v. Casey, *** U.S. ***, ***, 116 S.Ct. 2174, 2179, *** L.Ed.2d *** (1996). (Emphasis supplied).

In the current litigation, the Petitioner expresses and articulates that the State of Oklahoma is actively interfering with inmates' attempts to dispatch or transmit legal documents.

(B). POSTAGE CHARGES FOR INDIGENT PRISONERS

'It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal document(,) with notarial services to (duly) authenticate then, and with stamps to mail them.' Bounds v. Smith, 430 U.S. 817, 824-825, 97 S.Ct. 1491, 1496, 52 L.Ed.2d 72 (1977). (Emphasis supplied).

Undeniably, the State has erected 'roadblocks and disincentives to appeal,' Chafin v. Stynecombe, 412 U.S. 17, 34, n. 22, 93 S.Ct. 1977, 1986, n. 22, 36 L.Ed.2d 714, 733 (1973), via the imposition of the "debit system" legal mail policy under examination and review. See OP-030117.

The cases detailed heretofore in the previous section entitled Access to the Courts have no 'actual injury,' Lewis v. Casey, supra, 116 S.Ct., at 2178-2179, requirements as prejudice must be "presumed." Accord Strickland v. Washington, 466 U.S. 668, 692 , 104 S.Ct. 2052, 2067, 80 L.Ed.2d 674 (1984); United States v. Cronic, 466 U.S. 648, 658-660, n. 25, 104 S.Ct. 2039, 2046-2047, n. 25, 80 L.Ed.2d 657 (1984).

Similarly, the Petitioner contends that the denial of free legal mail postage satisifies the presumption of prejudice criteria. Additionally, the Petitioner

stipulates and announces that '(p)rejudice in these circumstances is so likely that case-by-case inquiry into prejudice is not worht the cost.' Strickland v. Washington, supra, 466 U.S., at 692, 104 S.Ct., at 2067. (Emphasis supplied).

(C). LEGAL MAIL CENSORSHIP

First, the Petitioner articulates and expounds that the Perpetrators, (Postal Clerk Supervisor) Helen Woodall and (Postal Clerk) Sally Wiggins, require that legal mail with an enclosed return envelope for acquisition of a "stamped file copy" be delivered to the Mack H. Alford Correctional Center Post Office in an unsealed condition and refused to "frank" the envelope in the direct presence of the inmate or prisoner.

While the Supreme Court has maintained that the requirement that legal mail from attorneys to prisoners be opened in the presence of the inmates, without being read by prison officials, does not infringe upon the prisoners' First, Sixth, and Fourteenth Admendment rights, the Petitioner avers that the critical or primary factor is the "opened in the presence of the inmates" stipulation. See Wolff v. McDonnell, 418 U.S. 539, 576-577, 94 S.Ct. 2963, 2984-2985, 41 L. Ed.2d 935 (1974).

The Eighth Circuit has decreed that privileged prisoner mail, either mailed to or from inmate's attorney and identified as such, could not be opened for inspections for contraband except in the presence of the inmate. See Jensen v. Klecker, 648 F.2d 1179 (8th Cir. 1981). Accord Ramos v. Lamm, 639 F.2d 559,

582 (10th Cir. 1980), cert. denied, 450 U.S. 1041, 101 S.Ct. 1758, 68 L.Ed.2d 239 (1981).

Unreasonable interference with prisoners' outgoing legal correspondence, and especially when it limits the inmates' access to the courts, creates a cause of action cognizable under Section 1983. See Martin v. Wainwright, 526 F.2d 938 (5th Cir. 1976).

Lastly, as to mail of inmates to and from counsel, prison officials who would interfere with First Admendment rights bear a heavy burden of showing abuse in terms of transmittal of contraband or the laying of plans for some unlawful or illegal scheme. See Wilkinson v. Skinner, 462 F.2d 670 (2nd Cir. 1972).

(D). CORRESPONDENCE LIST FOR LEGAL MAIL

The Department of Corrections, for the State of Oklahoma, has specified that '(t)he following individuals will be considered legal correspondents.

1. Courts
2. Attorneys of record or those in official attorney-client relationships (Name and address of the attorney will be on the envelope). Mail to and from paralegal service is not considered legal mail as they may not represent persons, and there is not attorney/client relationship or privilege.
3. The attorney general of the State of Oklahoma and any attorneys (or

law firms) representing the Department of Corrections or department employees in the course of litigation related to the department.'

OP-030117, page 8.

However, the United States Supreme Court has articulated that Bounds requires that inmates be provided with the tools 'to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement.' Lewis v. Casey, supra, 116 S.Ct., at 2192.

As the Supreme Court explained and clarified, '(i)n Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974), we extended this universe of relevant claims only slightly (from direct appeals and habeas petitions), to "civil rights actions"—i.e., actions under 42 U.S.C. Section 1983 to vindicate "basic constitutional rights." 418 U.S., at 579, 94 S.Ct., at 2986.' Lewis v. Casey, supra, 116 S.Ct., at 2181-2182.

Since the "Civil Rights Act of 1871," United States Code Annotated, Title 42, Section 1983, applies to '(e)very person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia ...,' United States Code Annotated, Title 42, Section 1983, an inmate must be allowed to seek redress for alleged deprivations of rights, privileges, and immunities secured by the Constitution and laws against myriad parties.

Ergo, the Petitioner contends that the legal mail correspondence list should

and must be expanded to include the following parties:

(A). All state employees and/or attorney-of-record.

(B). All county employees and/or attorney-of-record.

(C). All municipal or city employees and/or attorne-of-record.

(D). All criminal defense attorneys and/or attorney-of-record.

(E). All criminal appellate attorneys and/or attorney-of-record.

(F). All medical suppliers for the government and/or attorney-of-record.

(G). Certain private citizens and/or attorney-of-record.

(E). CERTIFIED MAIL POLICY AND RESULTING ACTUAL INJURIES

The Department of Corrections specified that '(c)ertified mail privileges (or rights) will be available to inmates at cost to the inmate unless the inmate is indigent. If indigent, certified mail service will only be provided to show delivery of legal pleadings (or documents) to the court clerk, both district level and appellate court level.' OP-030117, page 5.

First, at the Mack H. Alford Correctional Center, the Post Office routinely charges indigent prisoners for certified legal mail service despite the policy in effect to the contrary.

Second, the policy in effect does not facilitate general actions to vindicate "basic constitutional rights" against the entire spectrum of available parties or defendants acting "under color of state law" as discussed earlier.

Under this section, the Petitioner was denied certified mail service, which the Petitioner opines constitutes "actual injury," to facilitate the service of summons and petition in the heretoafter detailed cases:

(A). Lowe v. AM/PM Clinic and Brenda Hickman

District Court of Pottawatomie County

Case Number : C-96-0362

Action : Civil tort against government medical supplier.

(B). Lowe v. Lowe

District Court of Atoka County

Case Number : FD-96-0198

Action : Divorce (fundamental right).

(C). Lowe v. Cantrell

District Court of Atoka County

Case Number : CJ-97-008

Action : Access to law enforcement records civil tort.

(D). Lowe v. Geary

District Court of Atoka County

Case Number : CJ-97-009

Action : Ineffective assistance of defense counsel tort.

(E). Lowe v. Cantrell

District Court of Atoka County

Case Number : CJ-97-013

Action : Pre-trial access to the courts tort.

(F). Lowe v. Parker

District Court of Ateka County

Case Number : CJ-97-052

Action : State "civil rights action" or civil tort relief.

(F). ACTUAL INJURIES

In addition to the "actual injuries" documented in the previous section, the Petitioner asserts that the failure of the Mack H. Alford Correctional Center Post Office to follow standard procedures relating to the handling and franking of legal mail resulted in the dismissal of a civil rights action in the United States District Court, for the Eastern District of Oklahoma, on the 09th day of July 1997. Lowe v. Federal Bureau of Investigation, Case Number CIV-96-0512-B. Specifically, the Petitioner stipulates that the demand or requirement by the Perpetrators that legal mail containing a return envelope for the facilitation of the acquisition of a "stamped file copy" resulted in the loss or destruction of the "original" version of the Response accepted by the Court Clerk, on the 2nd day of July 1997, and returned to the Petitioner for lack of a signature.

(G). INDIGENCY STATUS DEFINITION

The Oklahoma Legislature has codified that '(i)n the absence of exceptional circumstances, leave to proceed in forma pauperis may be denied if the value of the money and securities in petitioner's, movant's, or plaintiff's (prison or) institutional (draw) accounts exceeds Two Hundred Dollars ($200.00).' Oklahoma Statutes Annotated, 1998 Cumulative Annual Pocket Part ("C.A.P.P."), Title 12,

Section 2003.1(C). (Emphasis supplied).

Therefore, the Petitioner asserts that the Oklahoma Legislature intended for the Department of Corrections, for the State of Oklahoma, to likewise utilize this monetary figure to determine indigency status for all inmate privileges.

Further, the access to the courts system employed by the Oklahoma Department of Corrections is very similar to the indigency methodology employed by the Arizona Department of Corrections where the topical appellate court stated on affirmance that '(t)he uncontroverted facts show that it costs at least $46 to purchase necessary personal items and legal supplies and that inmates must (be allowed to) purchase (essential) hygiene items to avoid punishment under prison regulations.' Gluth v. Kangas, 951 F.2d 1504, 1508 (9th Cir. 1991).

Ergo, the Fifteen Dollar ($15.00) indigency standard utilized by the Oklahoma Department of Corrections is extremely anachronistic and superannuated. Accord OP-030120, pages 9 and 10.

Thusly, the Petitioner stipulates that the proper indigency standard is, at de minimus, the Gluth value of forty-six dollars ($46.00) inflation adjusted, to $57.50, to ensure adequate and reasonable access to the courts.

(E). QUALIFIED IMMUNITY

While 'government officials performing discretionary functions generally are

shielded from liability for civil damages insofar as their conduct does not (in any fashion) violate clearly established statutory or constitutional rights of (or for) which a reasonable person would have known,' Harlow v. Fitzgerald, 457 U.S. 800, 812, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982), said "qualified" immunity is unwarranted in the current litigation under examination and review as the conduct of the Respondents violated "clearly established" statutory and constitutional rights afforded to the Petitioner and that the behavior of the Respondents was unreasonable under the applicable standard.

(I). PROVISION OF PERSONAL HYGIENE PRODUCTS TO INDIGENT PRISONERS

'(T)he cost of protecting a constitutional right cannot justify its total (or absolute) denial.' Bounds v. Smith, 430 U.S. 817, 825, 97 S.Ct. 1491, 1495, 52 L.Ed.2d 72 (1977). The Government has a constitutional duty to provide hygiene items to prisoners. See Wilson v. Seiter, 501 U.S. 294, 111 S.Ct. 2321, 115 L. Ed.2d 271 (1991); Rhodes v. Chapman, 452 U.S. 337, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981).

For legal materials, an inmate will bot be deprived of these supplies because he or she is unable to pay. Accord OP-030115. However, the State can deny, as the Petitioner was so denied, no cost indigent hygiene items to a prisoner and the Department of Corrections (DOC) finds this situation acceptable and proper, within the guidelines of recent Supreme Court decisions.

The Petitioner argues that indigency, as concerns hygiene items or products,

is determined based upon the ability to purchase said items. For instance, an inmate, for the prior month, earns and receives fifty dollars ($50.00) in funds and perfects legal work costing sixty dollars ($60.00) in photocopying charges, envelopes, and legal postage. Is said prisoner indigent? The Departmet of Corrections or State would argue that since total income for the inmate for the prior month was in excess of fifteen dollars ($15.00) the inmate or prisoner is not destitute. However, the Petitioner contends that since net income for the prior month was a negative ten dollars (-$10.00) the prisoner is fully indigent and that the State must provide indigent hygiene products as the prisoner lacks adequate funds to obtain personal hygiene items from the penitentiary canteen.

Further, the Petitioner asserts th t the provision of toothbrush, toothpaste, soap, comb, deodorant, and 5 razors is constitutionally deficient. First, the toothpast should be a flouride dentrifice and preferably ADA recogaised, the toothbrush should be of the appropriate stiffness (i.e., soft, medium, or hard) for the inmate as some persons are prone to gum loss and subsequent tooth loss from using toothbrushes that are not of the correct stiffness, and the inmate should be able to choose between plain deodorant and antiperspirant deoderant as numerous individuals are allergic to antiperspirants. Secondly, the State should provide dental floss as same has been recognized by the American Dental Association to be as important as daily brushing in preventing tooth decay.

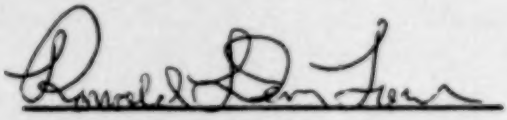
Additionally, the size of the supplied indigent tubes of toothpaste is at the current time 2.75 ounces. The Petitioner argues that said quantity or amount of toothpaste is wholly inadequate to supply adults with thirty (30) days, or

more depending on the month and other factors, of toothpaste. Basically, the Petitioner asseverates that "a pea size amount" (See directions on Colgate tube of toothpaste) is only adequate for children. Realistically, the toothpaste companies or the ADA should recommend acceptable daily and/or monthly needs and requirements for an adult brushing three (3) time daily.

CONCLUSIONS

The Petitioner, Ronald Dean Lowe, hereby respectfully entreaties the Supreme Court of the United States to forthwith sustain and grant the current petition for a writ of certiorari.

Respectfully submitted,



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